



October 17, 2018

Chairman Ajit Pai and Fellow Commissioners
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: Comment on Interpretation of the Telephone Consumer Protection Act in light of the Ninth Circuit's *Marks v. Crunch San Diego, LLC* Decision

Dear Chairman Pai and Commissioners:

Allstate Insurance Company ("Allstate") appreciates the opportunity to provide additional comments to the Federal Communications Commission ("FCC") as it continues to examine changes and reforms to the Telephone Consumer Protection Act ("TCPA"). The recent decision by the Ninth Circuit in *Marks v. Crunch San Diego, LLC* should further emphasize the need for the FCC to provide guidance and to make meaningful changes to the TCPA. Allstate and other companies continue to be challenged in trying to balance our need to fulfill our duties to serve our customers in times of life's uncertainties against the draconian penalties associated with even an unintentional violation of the TCPA. Specifically, these comments look to address clarification necessary to the interpretation of automatic telephone dialing systems ("ATDS").

A: Clarify an ATDS does NOT include devices that merely have capability to store and dial numbers

Allstate routinely needs to conduct customer outreach efficiently and effectively in times of emergencies, such as when hurricanes like those that have recently affected North Carolina and Florida impact our policyholders. We rely on the ability to contact our customers to inform them of critical information and potential gaps in their coverage. Contacting our customers through systems that have stored information and which can connect them immediately to our teams is essential to our mission of protecting them from life's uncertainties. The recent decision by the Ninth Circuit has far reaching implications in our service of customers and defines ATDS by the "capacity" or "potential use" standard that we understand was rejected specifically by the DC Circuit in its *ACA International* decision (*ACA International v. FCC*, Case No. 15-1211, 2018 WL 1352922 (D.C. Cir. Mar. 16, 2018)). We encourage the FCC to adopt a standard that considers the actual use of the equipment and focuses on its ability to randomly generate and dial numbers and not merely call numbers from electronic databases.

B: Codify *ACA International* interpretation of ATDS capacity and capability

The recent decision by the Ninth Circuit is in stark contrast to the *ACA International* decision by the DC Circuit. Allstate believes that the *ACA International* decision appropriately interpreted a narrowed definition of what constitutes an ATDS by again asking whether the equipment actually uses autodialer features to make calls rather than the equipment's "theoretical potential" or "functional capacity" to perform as an autodialer. The FCC should work to codify a narrowed definition that focuses on actual use. Using the *Marks* decision as a guideline of what constitutes an ATDS, every smartphone could qualify under the definition. Such a broad definition could continue to expose Allstate and its agents to frivolous and potentially crippling litigation aimed at not helping consumers but rather benefiting plaintiffs' attorneys seeking to exploit large companies under the guise of consumer protection. The law should not be a "gotcha." Using ATDS-type systems is essential to efficient and effective customer outreach. One touch or one click dialing is a cost effective and efficient means of dialing numbers (and reduces the risk of misdialed numbers) and should be considered as manually dialed and not included in (and specifically excluded from) the definition of ATDS. We appreciate the opportunity to provide comments. Thank you for your time and consideration of these comments.

Sincerely,

A handwritten signature in cursive script, reading "Maria Doughty".

Maria Doughty
Director of Public Policy